

**Letter of Findings: 42-20181654  
International Fuel Tax Agreement  
For the Year 2014**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Taxpayer was able to provide additional receipts that reduced the amount of fuel that was needed to be imputed for some units and, as a result, may decrease the overall assessment. Therefore, the Department will generate updated billing statements reflecting this finding.

### ISSUE

#### **I. International Fuel Tax Agreement - Fuel Tax Assessment.**

**Authority:** *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007); IC § 4-22-7-7; IC § 6-8.1-5-1; IC § 6-6-4.1-14; IC § 6-8.1-5-4; IFTA Articles of Agreement, § R1210.300 (2013); IFTA Procedures Manual, § P520 (2013); IFTA Procedures Manual, § P510 (2013); IFTA Audit Manual A350.

Taxpayer protests the assessment of additional fuel tax.

### STATEMENT OF FACTS

Taxpayer is a Motor Carrier based in Indiana. The Indiana Department of Revenue ("Department") conducted an audit which resulted in the assessment of International Fuel Tax Agreement ("IFTA") plus penalty and interest for 2014.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results. Further facts will be supplied as necessary.

### DISCUSSION

The Department conducted an IFTA audit and determined that Taxpayer owed additional IFTA taxes. The Department's audit concluded that Taxpayer reported units in each quarter of the audit period with unusually high miles per gallon ("MPGs"). Therefore, fuel was imputed to bring MPGs for those units within an acceptable range. Taxpayer contends that units the Department found to be excessive MPGs are accurate and that it is common to achieve their reported MPGs with the equipment, controls, and policy Taxpayer uses.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

The Department first refers to IC § 6-6-4.1-14, which states:

- (a) The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements with the appropriate official or officials from any other state or jurisdiction under which all or any part of the requirements of the Indiana Administrative Code are waived with respect to motor carriers that use in Indiana motor fuel upon which tax has been paid to the other state or jurisdiction. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent privileges with respect to motor fuel consumed in the other state or jurisdiction and on which a tax has been paid to this state.
- (b) The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter, including the requirements for trip permits, temporary authorizations, repair and maintenance permits, and annual permits and the payment of fees for permits and authorizations. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent exemptions to motor vehicles licensed in Indiana.

IC § 6-8.1-5-4 states:

- (a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.
- (b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:
- (1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or
  - (2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction.
- In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.
- (c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.
- (d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

IFTA Articles of Agreement, § R1210.300 (2013) provides that:

The standard for determining whether a proposed assessment may successfully be challenged by the licensee. "The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive." *Id.*

The IFTA Procedures Manual at § P510 (2013) provides that:

A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments.

A licensee must preserve all fuel and distance records for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction.

On request, the licensee shall make such records available for audit to any member jurisdiction.

The IFTA Procedures Manual at § P520 (2013) provides that:

In an IFTA audit, the burden of proof is on the licensee. The audit will be completed using the best information available to the base jurisdiction.

IFTA Audit Manual at A350 provides that:

.100 When records for the fleet as a whole are adequate for audit, the base jurisdiction shall have the authority to adjust the MPG or KPL.

.200 In instances where the records for specific vehicles in the fleet under audit are substantially impaired or missing, the base jurisdiction may make audit adjustments for fuel and distance for those vehicles based on factors such as:

- .005 Prior experience of the licensee;
- .0100 Licensees with similar operations;
- .015 Other vehicles in the fleet with similar operations;
- .020 Industry averages;
- .025 Records available from fuel distributors or other third parties; and
- .030 Other pertinent information the base jurisdiction may obtain or examine.

Taxpayer provided third party transaction listings and paper receipts to show the fuel portion. The summation of these fuel documents became the verified fuel. The verified fuel was compared to the "reported" figures. The greater of these two figures was utilized by the Department as the audited figure because the licensee did not maintain all of the fuel invoices to substantiate the reported figures. Once the audited fuel was determined, the reported distance was divided by the audited fuel to arrive at an audited MPG. For 21 of the 77 units, the audited MPG was excessive based on the weight and age of these units. The imputed gallons were calculated utilizing the fleet's MPG for the entire audit period for the vehicles with reasonable MPGs. The miles and fuel for the 21 units were excluded from the fleet's MPG calculation. A credit for tax paid was allowed for all fuel purchases found on the third party vendor statements and paper receipts that were presented. For the sample quarter, the first quarter of 2015, it was noted that the summary figures for distances did not correspond to the reported information on the IFTA-101. The quarterly fuel summaries for the 3rd and 4th quarters of 2015 did not correspond to the reported fuel found on the IFTA-101.

Taxpayer contends that they purchased trucks with auxiliary power units to cut down on the idle fuel consumption. Taxpayer also provided additional fuel receipts for the Department to review to show reduced fuel consumption. The Department has determined that the additional receipts may reduce the amount of fuel that needed to be imputed for a number of units. Based on this review, the Department will (1) identify the number of units for which fuel consumption needs to be recalculated and (2) generate an updated bill for the Taxpayer.

### **FINDING**

Taxpayer's protest is sustained, subject to review.

July 29, 2019

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